

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Ellman	Team: Squad #8	CCRB Case #: 201800078	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/19/2017 11:30 PM	Location of Incident: Front of 224 West 4th Street	Precinct: 06	18 Mo. SOL 6/19/2019	EO SOL 6/19/2019	
Date/Time CV Reported Sun, 12/24/2017 2:30 PM	CV Reported At: Other City agency	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/03/2018 11:09 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Cory Green	01392	950531	006 PCT
2. SGT John Becerra	4741	932311	006 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Benvenuto	23866	952459	006 PCT
2. LT Brian Flynn	00000	938492	006 PCT
3. POM Frank Delvecchio	05098	954711	006 PCT
4. POM Stephen Odriscoll	10416	961979	006 PCT
5. POF Brandice Severin	29355	962097	006 PCT
6. POM Michael Nolasco	19280	958992	006 PCT
7. POM Kelvin Ozuna	23907	946087	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Becerra	Abuse: Sergeant John Becerra stopped § 87(2)(b)	
B.POM Cory Green	Abuse: Police Officer Cory Green stopped § 87(2)(b)	
C.SGT John Becerra	Force: Sergeant John Becerra used physical force against § 87(2)(b)	
D.POM Cory Green	Force: Police Officer Cory Green used physical force against § 87(2)(b)	
E.SGT John Becerra	Force: Sergeant John Becerra used a Taser on § 87(2)(b)	
F.SGT John Becerra	Discourtesy: Sergeant John Becerra spoke discourteously to § 87(2)(b)	
G.SGT John Becerra	Force: Sergeant John Becerra restricted § 87(2)(b)'s breathing	
H.SGT John Becerra	Force: Sergeant John Becerra used physical force against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint to the 311 Call Center on December 24, 2017, generating SR 1-1-1503174729. The complaint was referred to the Internal Affairs Bureau and designated as IAB log 2017-51378. The complaint was received at the CCRB on January 3, 2018.

On December 19, 2017 at approximately 11:20 p.m., § 87(2)(b) was walking in the vicinity of 7th Avenue South, Christopher Street, and West 4th Street, in the West Village in Manhattan, when he was approached by Sgt. John Becerra and PO Cory Green, both of the 6th Precinct. **(Allegations A, B: Abuse of Authority—Stop,** § 87(2)(g) The officers asked for § 87(2)(b)'s ID, which he then provided. Minutes later, the officers told § 87(2)(b) that detectives wanted to speak with him at the 6th Precinct stationhouse. When § 87(2)(b) asked why, Sgt. Becerra and PO Green suddenly grabbed § 87(2)(b) and threw him up against the exterior of a nearby Bank of America location. **(Allegations C, D: Force—Physical force,** § 87(2)(g) While up against the wall, Sgt. Becerra fired his Taser at § 87(2)(b). § 87(2)(b) **(Allegation E: Force—Taser,** § 87(2)(g) § 87(2)(b) fell to the ground on his back. § 87(2)(b) removed one Taser prong from his body, at which point Sgt. Becerra allegedly said, “You broke my fucking Taser.” **(Allegation F: Discourtesy—Word,** § 87(2)(g) Sgt. Becerra allegedly pressed his knee into § 87(2)(b)'s chest **(Allegation G: Force—Restricted breathing,** § 87(2)(g) and punched him in the left eye. **(Allegation H: Force—Punch,** § 87(2)(g) Sgt. Becerra then allegedly attempted to place § 87(2)(b) into custody before punching him to the left eye again, after which § 87(2)(b) was handcuffed.

Bank of America surveillance footage was obtained, but was of too-low a quality to show the aforementioned allegations.

Findings and Recommendations

Allegation A—Abuse of Authority: Sergeant John Becerra stopped § 87(2)(b)

Allegation B—Abuse of Authority: Police Officer Cory Green stopped § 87(2)(b)

§ 87(2)(b) was walking home when he saw a taxi cab come to a stop in the middle of the crosswalk. § 87(2)(b) crossed from the east to west side of 7th Avenue South and motioned for the taxi driver to move his car back out of the crosswalk. § 87(2)(b) was not yelling at the taxi driver, and estimated that his voice level was at 6/10, with 10 being screaming. An unmarked police vehicle approached just as the light at the intersection turned green and the taxi drove away. Sgt. Becerra and PO Green exited the vehicle and asked § 87(2)(b) about yelling they said they heard. § 87(2)(b) began to explain the taxi coming to a stop in the middle of the street. § 87(2)(b) was not speaking particularly loudly at this time, nor was he moving his arms. PO Green asked § 87(2)(b) where he was from, and § 87(2)(b) explained that he has lived in § 87(2)(b) his whole life. PO Green again asked § 87(2)(b) where he was from, at which point Sgt. Becerra asked § 87(2)(b) for identification. (Board Review 01)

Sgt. Becerra was driving around the area with PO Green when they heard shouting that sounded like a fight; the officers were in plainclothes and in an unmarked vehicle. Sgt. Becerra parked the vehicle and saw § 87(2)(b) standing in the middle of the street on 7th Avenue South. Sgt. Becerra observed § 87(2)(b) obstructing southbound traffic for approximately 15-20

seconds, during which § 87(2)(b) was screaming epithets such as “Jihadi motherfucker” at a taxi. Sgt. Becerra determined § 87(2)(b)’s behavior constituted disorderly conduct. The officers exited their unmarked vehicle while watching § 87(2)(b) who Sgt. Becerra said was pacing back-and-forth in the intersection. § 87(2)(b) then walked out of the street and toward the sidewalk as the officers approached him. Sgt. Becerra believed § 87(2)(b) exited out of the street because he recognized Sgt. Becerra and PO Green as police officers; Sgt. Becerra did not provide a specific reason as to why he believed § 87(2)(b) identified him as an officer, and did not believe he or PO Green had prior encounters with § 87(2)(b). The officers held their badges out and verbally identified themselves as police officers to § 87(2)(b). Sgt. Becerra told § 87(2)(b) he was stopped for causing a commotion in the street. Sgt. Becerra did not remember if § 87(2)(b) provided an explanation for his behavior, yet recalled § 87(2)(b) mumbling that he lived in the area and that the officers knew who he was. § 87(2)(b) then provided his license to Sgt. Becerra. (Board Review 02)

PO Green and Sgt. Becerra heard a male screaming and drove in the direction of the noise. PO Green could not make out what the male was saying, but soon saw § 87(2)(b) yelling “Go back to your country” at a taxi in the street. PO Green recalled § 87(2)(b) as stranding next to a Citi Bike kiosk, but could not recall if § 87(2)(b) stood in a lane of traffic or obstructed any traffic. The officers exited the vehicle and approached § 87(2)(b). PO Green said he and Sgt. Becerra wanted to “assess” what was going on, as they had seen § 87(2)(b) yelling at this vehicle for approximately thirty seconds. The officers then asked § 87(2)(b) for his ID for the purpose of writing him a summons for disorderly conduct. PO Green told § 87(2)(b) he was not allowed to yell at people in the street, to which § 87(2)(b) told him that a taxi had been in the middle of the crosswalk. (Board Review 03)

§ 87(2)(g)
[REDACTED]

Allegation C—Force: Sergeant John Becerra used physical force against § 87(2)(b)

Allegation D—Force: Police Officer Cory Green used physical force against § 87(2)(b)

Sgt. Becerra took § 87(2)(b)’s license to the vehicle, and minutes later returned to the sidewalk in front of Bank of America, where PO Green and § 87(2)(b) stood. § 87(2)(b) asked Sgt. Becerra if he found any warrants. Sgt. Becerra did not directly answer § 87(2)(b) but told him there were detectives from the 6th Precinct who “wanted to talk” with § 87(2)(b). § 87(2)(b) told Sgt. Becerra that he was willing to speak with the detectives, but wanted to meet the officers at the stationhouse after contacting his lawyer. Sgt.

Becerra told § 87(2)(b) he was not allowed to call his lawyer. § 87(2)(b) asked why he was wanted at the stationhouse, at which point Sgt. Becerra and PO Green suddenly grabbed § 87(2)(b) and pressed him up against the windows of Bank of America. (Board Review 01)

Sgt. Becerra told EMS, “[Patient] was yelling and acting erratic[ally]. Upon approach of the [patient]...he became violent and began fighting with the officers...a physical altercation ensued and [patient] was Tasered.” (Board Review 11, Privileged medical documents)

Sgt. Becerra ran a warrant check of § 87(2)(b) on his department-issued phone while PO Green stood with § 87(2)(b). The search yielded an I-card with probable cause to arrest for felony criminal mischief regarding § 87(2)(b) breaking a window at a bank. Sgt. Becerra called the 6th Precinct detective squad, who were handling the case, to confirm that the I-card was valid. Detectives told Sgt. Becerra they would call him back momentarily after looking into § 87(2)(b) s case. § 87(2)(b) started to get “agitated” in the two minutes after Sgt. Becerra’s call, and was pacing about while telling officers he wanted to leave the location. Sgt. Becerra said § 87(2)(b) “looked like he wanted to fight” at this time, but said § 87(2)(b) made no verbal threats nor did anything with his body—beyond pacing—that was menacing. § 87(2)(b) walked toward Sgt. Becerra and threw a paper copy of his driver’s license at him; Sgt. Becerra later added that § 87(2)(b) balled the paper up and threw it at him, hitting Sgt. Becerra in the chest. Concurrently, § 87(2)(b) tried to grab the official, plastic license in Sgt. Becerra’s hand. Sgt. Becerra said § 87(2)(b) got very close to him, but that he “push[ed] him away” to “create space” before § 87(2)(b) could make contact. At this time, Sgt. Becerra determined § 87(2)(b) would be arrested for the initial disorderly conduct as well as harassment for throwing the paper at an officer; Sgt. Becerra had yet to receive confirmation on the I-card. Sgt. Becerra told § 87(2)(b) he was under arrest and instructed him to put his hands behind his back. The three were close to the exterior of Bank of America, and Sgt. Becerra described § 87(2)(b) as placing himself back against the Bank of America window, with his hands between the window and his body. Sgt. Becerra and PO Green attempted to grab § 87(2)(b) s hands to handcuff him, yet § 87(2)(b) would “not let” the officers handcuff him. (Board Review 02)

PO Green stood with § 87(2)(b) while Sgt. Becerra ran § 87(2)(b) s ID. PO Green described a five-minute timespan in which § 87(2)(b) was yelling and pacing, but neither said nor did anything threatening. PO Green recalled extending his arm to create distance between him and § 87(2)(b) at one point, as § 87(2)(b) got within a foot of PO Green. Sgt. Becerra then determined that § 87(2)(b) had an active I-card with probable cause to arrest. Concurrently, § 87(2)(b) lunged at Sgt. Becerra and appeared to be attempting to take his license from Sgt. Becerra’s hand; PO Green did not know if § 87(2)(b) made contact with Sgt. Becerra. The officers told § 87(2)(b) he needed to speak with detectives at the 6th Precinct stationhouse regarding a prior incident. They then told § 87(2)(b) he was under arrest, and instructed him to put his hands behind his back. § 87(2)(b) pulled his body away when PO Green and Sgt. Becerra attempted to secure his hands; PO Green initially said § 87(2)(b) actively resisted and pushed the officers away, but, when asked to clarify, said he was never pushed by § 87(2)(b) but did not know if Sgt. Becerra was. PO Green and Sgt. Becerra grappled with § 87(2)(b) while attempting to secure his hands, and § 87(2)(b) placed his back against the Bank of America window to push off against it. (Board Review 03)

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation E—Force: Sergeant John Becerra used a Taser on § 87(2)(b)

Allegation F—Discourtesy: Sergeant John Becerra spoke discourteously to § 87(2)(b)

Allegation G—Force: Sergeant John Becerra restricted § 87(2)(b)'s breathing.

Allegation H—Force: Sergeant John Becerra used physical force against § 87(2)(b)

§ 87(2)(b)'s medical records from § 87(2)(g) notes bruising to his cheeks, a hematoma to his eye, and wounds on his abdomen from Taser prongs. (Board Review 12, privileged medical documents.)

§ 87(2)(b) stood with his face pressed against the Bank of America window when Sgt. Becerra jabbed him in the jaw with a baton-like device § 87(2)(b) believed was a “cow prod.” § 87(2)(b) turned in reaction to the jab, at which point Sgt. Becerra discharged his Taser. Taser darts attached to § 87(2)(b)'s stomach, and he fell to the ground on his back. § 87(2)(b) grappled with the officers on the ground, and, in extreme pain from the Taser, removed the darts from his abdomen. In response, Sgt. Becerra yelled, “You broke my fucking Taser” and punched § 87(2)(b) in the eye. § 87(2)(b) remained on his back, and Sgt. Becerra pressed his elbows and knees into § 87(2)(b)'s chest. § 87(2)(b) repeatedly told Sgt. Becerra he could not breathe, yet Sgt. Becerra never lessened the pressure to § 87(2)(b)'s chest. Worried he was going to pass out, § 87(2)(b) turned his body so as to flip Sgt. Becerra off him; § 87(2)(b) did not push Sgt. Becerra off, but was able to get him off in the course of flipping over. Shortly thereafter, numerous NYPD cars arrived at the location, and § 87(2)(b) was placed into handcuffs. (Board Review 01)

§ 87(2)(b) sustained a hematoma to his left eye, which is visible in his arrest photo. (Board Review 04)

After approximately fifteen seconds of grappling up against the exterior of Bank of America, Sgt. Becerra removed his Taser from its holster and warned § 87(2)(b) that he would deploy the Taser if § 87(2)(b) continued to resist. Sgt. Becerra said § 87(2)(b) was resisting by “moving his body, thrashing, [and] pull[ing] away,” so as to prevent the officers from handcuffing him. Sgt. Becerra chose to Tase § 87(2)(b) because § 87(2)(b) was “significantly taller and bigger than [he and PO Green], and [because he] wanted to subdue § 87(2)(b) as fast as he could.” Sgt. Becerra could not recall if the officers attempted a leg sweep

to bring § 87(2)(b) to the ground, or if other modes of gaining compliance were attempted. § 87(2)(b) acknowledged Sgt. Becerra's warning, and asked that Sgt. Becerra not Tase him. The three continued to grapple, as § 87(2)(b) "did not want to be handcuffed." Approximately fifteen seconds after initially warning § 87(2)(b) Sgt. Becerra lifted § 87(2)(b)'s t-shirt and deployed the Taser into his stomach. § 87(2)(b) remained standing after the Taser was deployed. Immediately, § 87(2)(b) removed the two Taser prongs from his body, something Sgt. Becerra said he has never seen before and constituted "not normal behavior." Sgt. Becerra thought § 87(2)(b) might be high on PCP or Angel Dust, which heightens pain tolerance. Sgt. Becerra said § 87(2)(b) could have then used the prongs as sharp objects against the officers, but clarified that § 87(2)(b) only "briefly" held the darts in his hands before § 87(2)(b). Sgt. Becerra, and PO Green all fell to the ground while struggling. Sgt. Becerra approximated five to ten seconds between the Taser deployment and the fall to the ground. Sgt. Becerra said he remembered being pushed to the ground, a push for which § 87(2)(b) was charged with assault on a police officer and from which Sgt. Becerra sustained a back injury that caused him to go line of duty for four days. Sgt. Becerra initially evaded numerous questions regarding this push, saying § 87(2)(b)'s assault charge was for him "being hurt by § 87(2)(b) and pushing Sgt. Becerra numerous times. When asked if § 87(2)(b) pushed him to the ground, Sgt. Becerra said he fell "because of § 87(2)(b)'s actions," and later said that it "felt like" § 87(2)(b) actively pushed against him. Sgt. Becerra eventually specified that he fell to the ground because § 87(2)(b) pushed him; Sgt. Becerra did not know if § 87(2)(b) used one hand or two, but said he was pushed in his upper body. After falling to the ground, § 87(2)(b) continued to move around and screamed that he did nothing wrong. Sgt. Becerra recalled one of § 87(2)(b)'s hands in handcuffs, with the other arm under his body, and said he believed § 87(2)(b) was trying to stand up. Sgt. Becerra told § 87(2)(b) "Stop, I'm going to hit you," and then struck him in the eye with a closed fist "several times to gain compliance." Sgt. Becerra said he attempted to gain control of § 87(2)(b)'s arms after punching him, but was unable to do so. Sgt. Becerra again struck § 87(2)(b) to the eye, at which point he was able to handcuff him. Sgt. Becerra estimated he and PO Green were atop § 87(2)(b) for approximately one minute after they fell to the ground, with PO Green closer to his legs and Sgt. Becerra near his upper-body. Sgt. Becerra described using his elbow to hold § 87(2)(b)'s body down, and said he "might have" placed his knee onto § 87(2)(b)'s body. Sgt. Becerra never heard § 87(2)(b) panting or complaining that he was having difficulty breathing, and that he never said to § 87(2)(b) "You broke my fucking Taser," as his Taser was not damaged from the incident. Sgt. Becerra said a crowd formed amidst the struggle, which he estimated to be approximately 25 people. Per his memo book, Sgt. Becerra went Line of Duty, sick, for the four days after this incident. (Board Review 02)

PO Green prepared an Aided document for Sgt. Becerra's back injury. PO Green wrote, "[Sgt. Becerra] was involved in a struggle with perpetrator, during the struggle [Sgt. Becerra] was pushed by the perpetrator, sustaining pain to his entire back, left knee, neck, both shoulders, and his left arm. [Sgt. Becerra] was removed to § 87(2)(b)." (Board Review 13)

PO Green attributed the fall to § 87(2)(b) pushing off against the window behind him, and said that § 87(2)(b) never pushed him. He also described the Taser as happening after the fall, stating Sgt. Becerra immediately Tased § 87(2)(b) after falling to the ground. PO Green

believed § 87(2)(b) was warned of the Taser “at least once,” to which § 87(2)(b) did not respond. PO Green estimated the three had been struggling for approximately thirty seconds in total prior to the Taser’s deployment. § 87(2)(b) immediately removed one prong from his abdomen, which he held in his hand. PO Green could not recall if § 87(2)(b)’s demeanor changed after he was Tased, but said it did not have its intended effect of gaining compliance. PO Green then held § 87(2)(b)’s legs to the ground while Sgt. Becerra was atop his upper body. PO Green was aware of Sgt. Becerra punching § 87(2)(b) in the eye at this time, but did not see it himself. PO Green did not see Sgt. Becerra ever press down on § 87(2)(b)’s chest, and neither heard § 87(2)(b) panting nor complaining of shortness of breath. PO Green was not aware of any damage to Sgt. Becerra’s Taser and did not hear Sgt. Becerra say, “You broke my fucking Taser” or anything of the sort. (Board Review 03)

Per Patrol Guide Procedure 221-08, Use of Conducted Electric Weapons: (Board Review 05)

SCOPE “A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. It will often reduce the potential for injuries to members and suspects that may result from physical restraint and should be regarded as a possible alternative to such force and restraint, where practical. It is prohibited to use a CEW in situations that do not require the use of physical force.”

15) Factors to consider when determining the appropriate use of force include, but are not limited to:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, MOS, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, condition of the subject in comparison to MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a narcotic which would affect pain tolerance or increase the likelihood of violence

§ 87(2)(g)
[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- Sgt. Becerra has been a member-of-service for 14 years, and has been a subject in six CCRB complaints and 13 allegations, none of which were substantiated. However, Sgt. Becerra is the subject of another Taser allegation in an open CCRB case. In 201801128, Sgt. Becerra Tasered an individual who “clench[ed] his fists and charg[ed] at” him. (Board Review 07)
- PO Green has been a member-of-service for six years, and has been a subject in three CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A FOIL request was placed to the Comptroller’s Office on May 29, 2018, and will be added to the case file upon receipt. (Board Review 09)

• § 87(2)(b) § 87(2)(c) [REDACTED]

Squad No.: 8

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date